IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3264 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GSRTC

Versus

MEENABEN RAMJIBHAI VALAND

Appearance:

1. Special Civil Application No. 3264 of 1999

MR KM PARIKH for Petitioner No. 1

MS PARAGI K PARIKH for Petitioner No. 1

MR MUKESH H RATHOD for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 15/04/2004

ORAL JUDGEMENT

1. The petitioner has approached this Court

under Article 227 of the Constitution of India to challenge the judgment and award dated 30th June, 1998 passed in Reference (IT) No. 18 of 1995 by the Industrial Tribunal, Vadodara. By said award the Tribunal has directed the petitioner to give compassionate appointment to the respondent in the cadre of the Clerk with effect from 1st December, 1991 and to treat it as continuous service and also to pay to her the monetary benefits for the period between 1st December, 1991 and the date of actual appointment.

1.1. The respondent's father, namely Ramjibhai Lalabhai Valand was working as Conductor with the petitioner. He expired on 21st December, 1980 while in the employment. At that time the age of the present respondent was 7 years. It is the say of the respondent that there is a scheme for compassionate appointment to be given to the heirs of deceased employee of the petitioner who died in harness. Since at the time of the death of her father, the respondent was minor, she could not apply for compassionate appointment. However, she made an application after, attaining the majority, on 19th July, 1991 to the Divisional Officer alongwith the necessary certificates and other relevant documents. In response to the said application, the petitioner gave a reply dated 12th August, 1991 stating therein that since the application was made by the respondent after lapse of 10 years of the demise of her father, she could not be given the benefit of the compassionate appointment. The scheme originally provided that such application had to be made within a period of 5 years. However, the said period was extended from 5 to 10. Since her request was not accepted by the petitioner, she raised an industrial dispute, which was ultimately referred to the Tribunal by Deputy Labour Commissioner, Vadodara vide order dated 21st January, 1995.

1.2. Before the Tribunal the respondent filed statement of claim wherein she had averred that she was the heir of deceased workman Ramjibhai Lalabhai who had died while in the employment of the petitioner on 21st December, 1980. She had further averred that at the time when her father expired, she was aged only 7 years and she could not apply for compassionate appointment. According to her, on attaining the majority, she had made an application on 19th July, 1991, which was wrongly turned down by the petitioner vide its decision dated 12th August, 1991. She had further averred that in accordance with the amended scheme she could apply even after 10 years of the demise of her father. She, therefore, prayed for appointment to the post of Clerk.

1.3. As against that, the petitioner filed its written statement at Exh. 7 wherein it was admitted that the deceased was the employee of the petitioner and was discharging duty as Conductor. It was further admitted that he had died on 21st December, 1980 while in service. There was also no dispute with regard to scheme to grant compassionate appointment to the heirs of deceased employees. However, the only ground of objection that was raised was that respondent had applied after expiry of period of 10 years. According to the petitioner, the said reference was, therefore, required to be dismissed.

2. Before the Tribunal, both the parties did not lead oral evidence but produced documentary evidence. On the strength of the material produced before it, the Tribunal came to the conclusion that the respondent was entitled to have compassionate appointment on the post of Clerk. It also arrived at conclusion that she ought to have been appointed on the said post with effect from 1st December, 1991. In the opinion of the Tribunal the petitioner had wrongly denied job to her and, therefore, by aforesaid award, it directed to appoint the respondent on a post of Clerk in accordance with her qualifications and that too with effect from 1st December, 1991. The Tribunal further gave the direction to the effect that the petitioner should pay to her all the monetary benefits which could have been available to her as if she had been appointed on 1st December, 1991. This benefit was to be given for the period between 1st December, 1991 and the date of actual appointment on the said post. It is this award which is now sought to be challenged by the petitioner in this petition.

3. It may be noted here that this matter was on earlier occasion heard by this Court and considering the facts and circumstances it was suggested to the petitioner to find out a workable solution and for that purpose the hearing was adjourned to a later date. Today Mr. K.M. Parikh, learned advocate appearing for the petitioner states that the petitioner is not in a position to give her appointment even if she is prepared to forgo the monetary benefits awarded to her by the Tribunal. According to Mr. Parikh, it is the say of the petitioner Corporation that there are number of other candidates similarly situated waiting for their turn for compassionate appointment. They are much ahead of the present respondent. Their claim cannot be overlooked and the respondent cannot be allowed to steal march over them. Since the difficulty appears to be genuine one, the matter is heard on its merits for decision.

4. Mr. K.M. Parikh, learned advocate appearing for the petitioner has submitted that so far the respondent's entitlement to the compassionate appointment is concerned, there is no dispute. However, the directions given by the Tribunal are beyond the scope of the reference and they are required to be quashed. He has further submitted that if the petitioner is granted compassionate appointment forthwith, the claim of the others will be defeated without hearing them because they are not parties to the present proceedings.

4.1. As against that, Mr. M.H. Rathod, learned advocate appearing for the respondent has submitted that the application made by the respondent was in accordance with the provisions of the scheme and, therefore, there was no valid reason for the petitioner to deny the appointment. He has further submitted that considering the material on record the Tribunal has come to a correct conclusion and the directions given in the award are just and proper and the petitioner cannot refuse to follow the same. He has lastly submitted that this petition has no merits and it is required to be dismissed.

4.2. In support of his submissions Mr. Rathod has cited decisions of this Court rendered in the cases of Pravinchandra J. Sindhal v/s. G.S.R.T. Corpn. reported in 1993 (2) G.L.H. p.816, G.S.R.T.C. v. R.M. Makwana reported in 2002 (4) G.L.R. p.2923 and G.S.R.T.C. v. Kalubhai H. Valand reported in 2002 (4) G.L.R. p.2953, which have been taken into consideration.

5. Having gone through the record of this petition and also having carefully considered the rival submissions, it clearly appears that the respondent at the time her father expired, was aged only 7 years. She lost her father on 21st December, 1980. Naturally at such tender age she could not have applied for the compassionate appointment. However, on reaching the age of majority, she desired to take benefit of the scheme and, therefore, she applied on 19th July, 1991 for compassionate appointment. It also appears that the petitioner had issued circulars to the effect that the son or daughter of the deceased employee should be given compassionate appointment provided they were of major age. However, in case they were minor, initially the period of 5 years was prescribed for making such application. The said period was thereafter extended in view of the labour settlement arrived at between the petitioner and the labour association dated 1st August,

1987, whereby the period was extended to 10 years. It was also prescribed that the application could be made within one year of reaching the age of majority. Now the facts of this case clearly show that the application was made in time. If that be so, the petitioner had no reason to reject the request on the ground of delay. From the record of the petition, it appears that no other objection was raised. Thus, the order of rejection dated 12th August, 1991 was absolutely erroneous. The conclusion reached by the Tribunal to the effect that the respondent was entitled to receive compassionate appointment is just and proper and it does not call for any interference by this Court.

5.1. However, the question that remains to be decided is whether the Tribunal could have given direction for immediate appointment and that too with effect from the date of application i.e. 19th July, 1991 and also direct the petitioner to pay all the monetary benefits commencing from the said date till the date of actual appointment. It clearly appears that such directions are beyond the scope of the reference. The Tribunal has proceeded on the footing as if it was deciding a case of illegal termination of service of an employee. As stated above, even if the respondent is entitled to receive the benefit of the scheme for compassionate appointment, there are number of other candidates who are similarly situated and who are standing in queue ahead of the respondent. Merely because they have not approached the industrial forum, it cannot be said that they are not entitled to the benefit of the scheme. If that be so, the respondent cannot be allowed to overtake them and to have the appointment and that too with all monetary benefits. Such directions, therefore, are required to be quashed set aside and they are hereby ordered to be quashed and set aside. It is now directed that the petitioner shall examine the case of the respondent and will give her appointment on the post of Clerk, as and when she gets her turn and the said appointment would be effective from the date of actual appointment and not from the date of the application i.e. 19th July, 1991.

With aforesaid directions, this petition is partly allowed. Rule made absolute to the aforesaid extent with no order as to costs.

[AKSHAY H. MEHTA, J.]

* Pansala.